BEFORE THE HEARING EXAMINER
FOR THE CITY OF ISSAQUAH

In the Matter of the Application of	)	Nos. PRJ13-00042 & PP18-00003
	)	
Ken Lyons, on behalf of,	)	
Boardwalk Real Estate, LLC	)	**Mine Hill Creek Proposal**
	)	
	)	
	)	
For Approval of a Preliminary Plat	)	FINDINGS, CONCLUSIONS,
And Critical Areas Variance	)	AND DECISION

SUMMARY OF DECISION

The request for preliminary plat approval to subdivide two parcels, totaling approximately 4.9 acres, into 20 single-family residential lots with associated improvements, and for a critical areas variance to allow for the installation of stormwater, water, and sewer infrastructure within the inner 75 percent of a Class 2 stream buffer, on property located to the southwest of the northern intersection of Mine Hill Road SW and Wildwood Blvd SW, is **APPROVED**. Conditions are necessary to mitigate specific impacts of the proposed development.

SUMMARY OF RECORD

Hearing Date:
The Hearing Examiner held an open record hearing on the request on April 22, 2021, using remote technology.

Testimony:
The following individuals presented testimony under oath at the open record hearing:

Valerie Porter, City Associate Planner
Stacey Rush, City Development Services Civil Engineer
Ken Lyons, Applicant Representative
Teresa Opolka, Wetland Specialist, Aquatica Environmental Consulting, LLC
Lucy Sloman, City Land Development Manager
Ashley Anderson
Maher Joudi, Project Engineer, D.R. Strong Consulting Engineers, Inc.

Exhibits:
The following exhibits were admitted into the record:
1. Preliminary Plat Plans (10 Sheets), revised June 29, 2020
2. Project Narrative, revised June 30, 2020
3. Critical Area Variance Narrative, dated June 30, 2020

4. Land Use Application, dated November 6, 2018
5. Legal Description of Real Property, dated October 3, 2018
6. Mitigated Determination of Nonsignificance (MDNS), dated February 12, 2021
7. SEPA Environmental Checklist, revised June 26, 2020
8. Critical Area Report, Aquatica Environmental Consulting, LLC, dated October 23, 2018
9. Preliminary Coal Mine Hazard Assessment, Icicle Creek Engineers, Inc., dated July 7, 2015
10. Geotechnical Engineering Report, Icicle Creek Engineers, Inc., dated June 29, 2020
11. Full Drainage Report, D. R. Strong Consulting Engineers, Inc., dated April 29, 2020
12. Conceptual Mitigation Plan, Aquatica Environmental Consulting, LLC, dated June 2020
13. Mitigation Plan Set (5 Sheets), dated June 29, 2020
14. Arborist Report, Creative Landscape Solutions, revised October 12, 2020
15. Email from Matt Tuell to Ken Lyons, dated April 28, 2020, with email string
16. Traffic Impact Analysis, Transportation Engineering Northwest, dated August 26, 2019
17. Transportation Concurrency Certificate, issued March 12, 2019
18. Deviation from Street Standards Request, dated September 20, 2019
19. Affidavit of Service of Mailing (Neighborhood Meeting), dated October 31, 2018
20. Affidavit of Service of Mailing (Preliminary Plat Application), dated March 21, 2019
21. Affidavit of Service of Mailing (Critical Areas Variance Application), dated October 26, 2020
22. Notice of Environmental Neighborhood Meeting, held March 31, 2021
23. Affidavit of Sign Installation (Public Hearing), dated April 12, 2021
24. Affidavit of Service of Mailing (Public Hearing), dated April 8, 2021
25. Affidavit of Publication, *The Seattle Times*, dated April 16, 2021
26. Written Comments:
    a. Comment from Christine Pydych, dated April 5, 2019
    b. Comment from Steve Briggs, dated April 4, 2019
    c. Comment from Jill Rapier, dated April 4, 2019
    d. Comment from Nicole Masciocchi, dated April 3, 2019
    e. Comment from Nick Marquardt, dated April 5, 2019
    f. Comment from Kristina Gravette, dated April 3, 2019
    g. Comment from Anthony P. Pydych, dated April 4, 2019
    h. Comment from Anthony P. Pydych, dated December 30, 2019
    i. Comment from John and Francie Kern, dated April 4, 2019
    j. Comment from Quattro, LLC, dated November 10, 2020
    k. Comment from Leslie Pantuso, dated April 4, 2019
    l. Comment from Nicole Pyle, dated April 3, 2019
    m. Comment from Lotte and Mads Torgersen, dated April 1, 2019
    n. Comment from Heather Briggs, dated April 3, 3019
    o. Comment from Leslie Grossruck, dated April 5, 2019
    p. Comment from Wanda Nuxoll, dated November 16, 2018
    q. Comment from Anthony P. Pydych, dated November 16, 2018

r. Comment from Joe Schwab, dated March 30, 2021
s. Comment from Paula De Lucia, dated April 29, 2021

27. Revised Tree Retention Sheet, revised June 29, 2020
28. Comment from Washington State Department of Fish and Wildlife, dated February 12, 2021
29. City Staff Presentation Slides, dated April 22, 2021
30. Staff Report, dated April 12, 2021
31. Applicant Presentation Slides, dated April 22, 2021
32. Peer Review Documents:
    a. Critical Areas Study Peer Review, The Watershed Company, dated May 7, 2019
    b. Mitigation Plan Peer Review, The Watershed Company, dated December 3, 2019
    c. Variance and Mitigation Plan Peer Review, The Watershed Company, dated October 20, 2020
    d. Traffic Assessment Review Comments, Transpo Group, dated January 27, 2020
    e. Geotechnical Report Peer Review Comments, Wood Environment and Infrastructure Solutions, Inc., dated June 3, 2019
    f. Geotechnical Report 2nd Peer Review Comments, Wood Environment and Infrastructure Solutions, Inc., dated December 24, 2019
    g. Geotechnical Report 3rd Peer Review Comments, Wood Environment and Infrastructure Solutions, Inc., dated August 31, 2020
    h. Geotechnical Report Peer Review Comments, Golder Associates, Inc., dated May 20, 2019
    i. Geotechnical Report 2nd Peer Review Comments, Golder Associates, Inc., dated January 20, 2020

The Hearing Examiner enters the following findings and conclusions based upon the testimony and exhibits admitted at the open record hearing:

FINDINGS

Application and Notice

1. Ken Lyons, on behalf of Boardwalk Real Estate, LLC (Applicant), requests approval of a preliminary plat to subdivide two parcels, totaling approximately 4.9 acres, into 20 single-family residential lots, utilizing the cluster housing provisions of Issaquah Municipal Code (IMC) 18.07.420. Associated improvements would include a new public right-of-way providing access to the subdivision from SW Clark Street; two new internal private roadways providing access to 17 of the lots from the new public right-of-way; frontage improvements to Mine Hill Road SW, which would provide direct access to the remaining 3 lots; conversion of a portion of an existing driveway within a critical area buffer into a trail proving pedestrian access to Mine Hill Road SW; stormwater management facilities; open space; and landscaping. In addition, the proposed development would also include two Native Growth Protection Easement (NGPE) tracts to permanently protect critical areas and associated buffers on-site. Because the

Applicant proposes to install stormwater, water, and sewer infrastructure within the inner 75 percent of a Class 2 stream buffer, approval of a critical areas variance is also required for the project. The property is located on the west side of Mine Hill Road SW, south of the northern intersection of Mine Hill Road SW and Wildwood Blvd SW.[1] *Exhibits 1 through 5; Exhibit 30, Staff Report, pages 1, 2, and 19 through 23.*

2. The City of Issaquah (City) determined that the preliminary plat application was complete on February 14, 2019.[2] On March 22, 2019, the City mailed notice of the preliminary plat application to property owners within 300 feet of the site and to parties of record, with a comment deadline of April 5, 2019. The City determined that the critical areas variance application associated with the proposal was complete on July 8, 2020. On October 26, 2020, the City mailed notice of the critical areas variance application to property owners within 300 feet of the site and to parties of record, with a comment deadline of November 10, 2020. On April 8, 2021, the City mailed notice of the open record hearing associated with the applications to property owners within 300 feet of the site. On April 12, 2021, notice of the hearing was posted on-site and published in the *Seattle Times.* The City received several comments in response to its notice materials, which generally raised concerns about the proposed density of the development, traffic impacts, stormwater impacts, impacts to wildlife habitat, proposed tree removal, and impacts to adjacent properties. The public comments are discussed in detail later in this decision. *Exhibits 19 through 26; Exhibit 30, Staff Report, pages 3 and 4.*

State Environmental Policy Act

3. The City acted as lead agency and analyzed the environmental impacts of the proposal, as required by the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW). The City reviewed the Applicant's environmental checklist and other information on file and determined that, with mitigation measures, the proposal would not have a probable significant adverse impact on the environment. Accordingly, the City issued a Mitigated Determination of Nonsignificance (MDNS) on February 12, 2021, with a comment and appeal deadline of March 5, 2021. The same day, the City provided notice of the MDNS by sending notice to reviewing agencies and parties of record, posting notice on the City website, and publishing notice in *The Seattle Times*. The City received one comment from the Washington State Department of Fish and Wildlife (WDFW), which raised concerns about the classification of an on-site stream (Mine Hill Creek) as a Class 2 stream without salmonids. WDFW requested that the City

[1] The subject property is identified by Tax Assessor Parcel Nos. 3324069036 and 3324069039. *Exhibit 30, Staff Report, page 1*. A legal description of the parcels is provided in Exhibit 5.

[2] A pre-application neighborhood meeting was held on November 15, 2018, consistent with municipal code requirements. In addition, the City held an Environmental Neighborhood Meeting on the proposal on March 31, 2021. *Exhibit 19; Exhibit 22.*

reclassify Mine Hill Creek as a fish-bearing stream because, although not currently fish-bearing, it could provide suitable fish habitat if an existing downstream culvert were to be removed in the future. City Associate Planner Valerie Porter explained at the open record hearing that the municipal code requires the City to classify streams according to their existing conditions without consideration of potential future stream conditions and, accordingly, the City could not accommodate WDFW's request. No other comments specific to the MDNS were received and the MDNS was not appealed. *Exhibit 6; Exhibit 28; Exhibit 30, Staff Report, pages 3 and 24; Testimony of Valerie Porter.*

4. The MDNS includes the following mitigation requirements:

- The Applicant shall submit a mitigation and enhancement plan for the reduced critical area buffers to demonstrate the planting would meet the required planting density and fencing would be in the correct location. The mitigation plan shall be approved by the City Community Planning & Development Department (CPDD) prior issuing a site work permit.
- The final mitigation plan is required for approval by CPDD prior to issuing constriction permits that would impact the critical areas. Final plans shall include a planting plan, grading plan, and a five-year monitoring/maintenance plan with performance standards for monitoring success of the enhancement planting. The plans shall meet King County Critical Areas Mitigation Guidelines for monitoring performing standards.
- The Applicant shall provide an as-built plan of the stream and wetland buffer enhancements, and the consulting biologist shall verify in writing that the planting has been installed per plan prior to final inspection.
- The moderate coal mine hazard area shall be shown and recorded on the short plat plans. The plans shall note the construction of structures within the moderate coal mine hazard must follow the recommendations in the final geotechnical report and/or coal mine hazard assessment. A third-party independent review of the geotechnical report and building plans may be required at the Applicant's expense.
- The proposal will require review and permit approval by the Washington State Department of Fish & Wildlife (Hydraulic Project Approval, HPA). A copy of the approved HPA shall be provided to CPDD prior to issuance of construction permits.
- A Cultural Resources Assessment must be conducted prior to demolition of existing structures. In the event that resources are encountered during project-related excavation activities, all work in the immediate area of the find shall be halted until a qualified archeological monitor can assess and evaluate the find.
- Pursuant to the City's Traffic Impact Fee and Bicycle Pedestrian Mitigation Fee Update and Fire Impact Fee & General Government Buildings and Law Enforcement Mitigation Fees Update, both of which

are adopted as SEPA policies under IMC 18.10.260, the Applicant shall mitigate its direct impacts on general government, law enforcement, and bicycle and pedestrian facilities by voluntarily paying the mitigation fees established in the City's fee studies in effect on the date of building permit issuance.

Exhibit 6.

Comprehensive Plan, Zoning, and Surrounding Property

5. The property is located in the "Single Family - Suburban" (SF-S) zoning district of the Squak Mountain subarea and is designated "Low-Density Residential" under the City Comprehensive Plan. The primary purpose of the SF-S zone is "to provide for single family neighborhoods in an urban setting while buffering these neighborhoods from commercial services." *IMC 18.06.100.C.* Additional purposes of the SF-S zone include: establishing and preserving residential neighborhoods for detached single-family units free from incompatible uses; discouraging through arterial traffic that does not serve the affected single-family neighborhood; and providing opportunities for single-family residential development in areas served by public and urban services. Detached single-family dwellings are a permitted use in the SF-S zone. *IMC 18.06.100C; IMC Table 18.06.130.* Surrounding properties are developed with multi-family units to the north and single-family residences to the east, south, and west. *Exhibit 30, Staff Report, pages 1 and 3.*

6. As noted above, the Applicant proposes to develop the approximately 4.9-acre property under the cluster housing provisions of the municipal code, which is a permitted development type in the SF-S zone on properties measuring a minimum of two acres. *IMC Table 18.06.130; IMC 18.07.420.*[3] The purpose of cluster housing development standards is to achieve the maximum allowable density within a zoning district, through lot-size reduction, while preserving critical areas and other pervious surfaces; to provide more common usable and native forested open space; to encourage affordable housing through the provision of smaller lots; and to provide a more efficient arrangement of structures for providing services and infrastructure. *IMC 18.07.420.A. Exhibit 1; Exhibit 2; Exhibit 4; Exhibit 30, Staff Report, pages 3, 5, 6, 8, and 9.*

7. Development standards in the SF-S zone provide for a maximum density of 4.5 units per acre. The Applicant proposes a density of 4.08 dwelling units per acre, consistent with this requirement. Additional development standards in the SF-S zone require a 9,600 square foot minimum lot size, a 20-foot front setback, 8-foot side setbacks, a 10-foot rear setback, 40 percent impervious surface, 60 percent pervious surface, a 30-foot base building height, and a 70-foot minimum lot width. *IMC 18.07.360 (District standards*

[3] Because the subject property measures less than five acres, a cluster housing development agreement approved by the City Council is not required for the project under IMC 18.07.420.C. *Exhibit 30, Staff Report, page 5.*

table.1). Under the cluster housing development standards of IMC 18.07.420.B.1, however, the minimum lot size and width requirements do not apply to lots within the cluster. Additionally, setback requirements apply only to the exterior site boundaries, and pervious and impervious surface requirements apply to the gross site, prior to subdivision or other actions, with no minimum requirements for the individual lots. *IMC 18.07.420.B.4.c and d.* The City would review the proposal for compliance with applicable cluster housing developments standards related to impervious/pervious surface areas, minimum setbacks, and maximum building height during the building permit stage. *Exhibits 1 through 4; Exhibit 30, Staff Report, pages 4 through 8.*

Existing Conditions

8. The subject property is comprised of two contiguous parcels totaling approximately 4.9 acres and is located on the west side of Mine Hill Road SW, south of the northern intersection of Mine Hill Road SW and Wildwood Blvd SW. A majority of the site is undeveloped and consists of forested land. As discussed in more detail below, the property contains approximately 1.86 acres of critical areas, including a Category II wetland (Wetland A), a Class 2 stream (Mine Hill Creek), a Class 4 stream (Stream B), steep slope and landslide hazard areas, moderate coal mine hazard areas, and associated buffers. The site slopes from the southwest corner to the northeast corner and is bisected north to south by Mine Hill Creek. There are two existing homes with accessory structures on the property that would remain in proposed Lots 1 and 3 along the eastern portion of the property adjacent to Mine Hill Road SW. An abandoned detached accessory dwelling unit on the west side of Mine Hill Creek would be removed. The property also contains an existing gravel driveway located within the buffer associated with Mine Hill Creek, which provides access to a City-maintained culvert at the northeast corner of the property and to the western portion of the property. The existing driveway would be converted to a pedestrian trail and would be extended to connect to a proposed internal roadway to provide pedestrian access from the western portion of the property to Mine Hill Road SW. *Exhibit 1; Exhibits 8 through 11; Exhibit 30, Staff Report, pages 3, 6, 7, and 9 through 16.*

Proposed Development

Preliminary Plat

9. The Applicant proposes to subdivide the 4.9-acre property into 20 single-family residential lots under the City's cluster housing development standards. The Applicant would construct a new off-site public road to provide vehicular access to the subdivision from SW Clark Street, as well as two private internal two-lane roads providing access to the 17 lots in the western portion of the site. The new internal roads would be designed to provide for on-street guest parking. Access to the three lots in the southeast corner of the site would be provided from Mine Hill Road SW. As noted above, an existing gravel driveway on the property would be converted to a pedestrian trail. Additional improvements associated with the proposal would include utility extensions and

stormwater facilities contained in a 14,079 square foot combined stormwater/open-space tract. The proposed location for utility extensions and stormwater outfalls requires approval of a critical areas variance. The Applicant proposes to permanently protect approximately 1.86 acres of on-site critical areas and associated buffers within Native Growth Protection Easements (NGPEs). *Exhibits 1 through 4; Exhibit 30, Staff Report, pages 3, and 7 through 16.*

Critical Areas

10. Aquatica Environmental Consulting, LLC, prepared a Critical Area Study, dated October 23, 2018, and Conceptual Mitigation Plan, dated June 29, 2021, for the proposed development. Mine Hill Creek, a Class 2 stream requiring a standard 75-foot buffer and additional 15-foot building setback, flows through the site, entering near the center of the south property line and exiting at the northeast corner through a 200-foot culvert that discharges to Issaquah Creek. The property also contains a Class 4 stream (Stream B) requiring a standard 25-foot buffer and additional 15-foot building setback in the eastern central portion of the site. In addition, the property contains an approximately 5,775 square foot Category III wetland (Wetland A) requiring a standard 75-foot buffer and additional 15-foot building setback at the center of the site, directly west of Mine Hill Creek. The proposed development would not directly impact any of the on-site critical areas but would impact associated buffers. To mitigate for proposed impacts to stream and wetland buffers, the Applicant would utilize the buffer averaging provisions of IMC 18.10.650.D and IMC 18.10.790.D, which allow for a reduction of up to 25 percent of standard stream and wetland buffer widths provided that certain requirements are met, including the provision of replacement buffer area and buffer enhancement measures to ensure that buffer averaging would not result in a loss of buffer functions or values. The Applicant would also utilize the buffer reduction provisions of IMC 18.10.650.D.4 and IMC 18.10.790.D.5, which allow standard stream and wetland buffers to be reduced at a 1:1 ratio with the removal of existing, legally nonconforming impervious surface areas located in the buffer areas.

Specifically, the Applicant proposes to remove approximately 4,529 square feet of stream buffer, receive credit for removing 1,211 square feet of legally nonconforming imperious surface area within the stream buffer, and provide 3,457 square feet of replacement stream buffer. The Applicant also proposes to remove approximately 1,548 square feet of wetland buffer, receive credit for removing 835 square feet of legally nonconforming impervious surface area within the wetland buffer, and provide 721 square feet of replacement wetland buffer. The Applicant would enhance remaining buffer areas by removing invasive species and planting native trees and shrubs. The Applicant would also permanently protect the on-site wetland, streams, and associated buffers within NGPEs. The NGPE tracts would be owned and maintained by a homeowners association. As noted above, an existing, legally nonconforming residence and garage on proposed Lot 1 are located within the existing buffer associated with Mine Hill Creek.

The Applicant does not propose to remove the existing residence and garage as part of the proposal but would reduce the degree of nonconformity through the proposed buffer reduction and averaging, consistent with the requirements of IMC 18.08.050.C. The Applicant proposes to install sewer and water utilities along the newly constructed pedestrian trail and to locate stormwater outfalls close to the Mine Hill Creek ordinary high-water mark, which would result in impacts to the inner 75 percent of the Mine Hill Creek buffer and, therefore, requires a critical areas variance, as discussed in more detail below. Aquatica Environmental Consulting, LLC, determined that the proposed mitigation would result in an increase in buffer functions and values. The City's third-party consultant, The Watershed Company, reviewed the Applicant's Critical Areas Study and Conceptual Mitigation Plan and determined that the proposed buffer alterations would not adversely impact critical area functions and values and that the proposal would comply with code requirements. *Exhibit 1; Exhibit 8; Exhibit 12; Exhibit 13; Exhibit 30, Staff Report, pages 9 through 12; Exhibit 32.a through 32.c.*

11. Icicle Creek Engineers, Inc., prepared a preliminary coal mine hazard assessment report, dated July 7, 2015, and revised Geotechnical Engineering Report, dated June 29, 2020, for the proposed development. The reports determined that a majority of the property is within a declassified coal mine area and may be developed without restrictions associated with coal mine hazards. The reports, however, identified a moderate coal mine hazard area located at the southeast corner of the property that would affect development of proposed Lots 2 and 3. As noted above, the existing residence and associated improvements on proposed Lot 3 would not be removed as part of the proposal. The reports determined that risks associated with the proposed development of Lot 2, and potential future redevelopment of Lot 3, would be sufficiently mitigated with engineering recommendations. The City would review any proposed home construction on Lots 2 and 3 for compliance with the engineering recommendations at the construction permit phase. In addition, the Applicant would be required to submit a final coal mine hazard assessment report for approval by the City prior to issuance of a site work permit. The reports also identified several steep slope areas on-site but determined that all but one of the steep slope areas would be exempt from steep slope regulations under IMC 18.10.580.E. The only regulated steep slope identified on-site (Slope 5) is located near the center of the property, directly west of Mine Hill Creek. Regulated steep slope areas require a minimum 50-foot buffer, which may be reduced to a minimum of 10 feet if a critical areas study demonstrates that the reduction would not reduce the level of protection provided by a standard 50-foot buffer. Icicle Creek Engineers recommended a 15-foot setback for Slope 5. Due to its location, Slope 5 and its recommended buffer area, as well as the remaining unregulated steep slope areas on-site, would be wholly contained within the NGPE tract associated with Mine Hill Creek and Wetland A. The preliminary coal mine hazard assessment report and revised Geotechnical Engineering Report were reviewed by two third-party consultants selected by the City, and both consultants concurred with Icicle Creek Engineers' determinations and recommendations

and the Applicant would comply with the requirements and recommendations identified in the geotechnical reports. *Exhibit 1; Exhibit 9; Exhibit 10; Exhibit 30, Staff Report, pages 12 and 13; Exhibit 32.e through Exhibit 32.i.*

Stormwater

12. Stormwater management for the project would be required to comply with the 2012 Department of Ecology Stormwater Management Manual for Western Washington, as amended in 2014, and with the 2017 addendum to the City's adopted storm design manual. Additionally, runoff from pollution generating impervious surfaces to Mine Hill Creek would require compliance with the Sensitive Lake Water Quality Treatment Standard. D.R. Strong Consulting Engineers, Inc., prepared a drainage report for the Applicant, dated April 29, 2020, addressing how stormwater would be managed on-site. Runoff from the site currently sheet flows to Mine Hill Creek at the northeast corner of the property. Runoff from impervious surfaces would be collected and conveyed to an underground detention vault located within proposed Tract B for water quality treatment prior to discharging at a natural discharge location to Mine Hill Creek. The on-site stormwater management facilities would be privately owned and maintained by a homeowners association. The Applicant would also construct a conveyance system along Mine Hill Road SW, which would direct stormwater to an outfall discharging to Mine Hill Creek. The stormwater facilities along Mine Hill Road SW would be publicly maintained and located within public easements and/or rights-of-way. As noted above, the proposed location of both stormwater outfalls would be within the inner 75 percent of the Mine Hill Creek buffer and, therefore, requires approval of a critical areas variance. In addition, the project may require a Hydraulic Project Approval (HPA) from WDFW, and the Applicant would be required to comply with any approval conditions of the HPA. City staff reviewed the Applicant's preliminary stormwater management design and determined that it was sufficient for preliminary plat approval. A detailed review of the Applicant's final stormwater design would occur during the construction permit phase. *Exhibit 1; Exhibit 11; Exhibit 30, Staff Report, pages 17 and 18.*

Access and Parking

13. Access to the three proposed lots at the southeast corner of the property would be provided directly from Mine Hill Road SW. Vehicular access to the western portion of the site would be provided from a new public street extending north from the subdivision to SW Clark Street, which would consist of two 10-foot-wide travel lanes, two six-inch curbs, a five-foot-wide planter strip, and a five-foot-wide sidewalk on the east side of the street. Access to the 17 proposed lots in the western portion of the site would be provided by two new private internal roads connecting with the new public street extension, which would consist of two 11-foot-wide travel lanes, as well as six-inch curbs, five-foot-wide planter strips, and five-foot-wide sidewalks on both sides of the travel lanes. City staff reviewed the designs for the proposed new public and private streets and determined that they would be consistent with the City's street design

standards. Additional review for compliance with street standards would occur at during the construction permit stage. The existing conditions of Mine Hill Road SW do not currently meet fire code road width requirements. Due to the historic character of Mine Hill Road SW and the proximity of existing homes to the road, which limits the ability to provide additional pavement expansion for travel lanes, the Applicant has requested a deviation from applicable street standards that would reduce the required travel lane expansion while maintaining the 20-foot travel lane necessary to provide emergency vehicle access and dedicating additional right-of-way to address parking needs for the area. The City approved the requested deviation following interdepartmental review. The project would require each lot to provide a minimum of two on-site parking spaces. City staff reviewed the proposal and determined that it would be feasible to provide the on-site parking spaces required for each lot. City staff would review the proposed development for compliance with lot parking requirements at the building permit stage. *Exhibit 1; Exhibit 18; Exhibit 30, pages 7, 15, and 16.*

Traffic

14. Transportation Engineering Northwest (TENW) conducted a limited study to determine traffic impacts of the proposed project. TENW determined that a full buildout of the subdivision as proposed would generate an estimated net increase of 118 daily trips, 18 AM peak-hour trips, and 20 PM peak-hour trips. TENW also determined that all studied intersections would operate at acceptable levels of service with the proposed development. In addition, TENW determined that the estimated sight distance for vehicles looking north on Wildwood Blvd SW from SW Clark Street would be approximately 135 feet due to exiting vegetation and an existing residential building on private property, which is less than the City's minimum 335-foot sight distance standard. TENW further determined that additional vehicles generated by the proposal queuing on Wildwood Blvd SW while approaching SW Newport Way would not be expected to block vehicles exiting from SW Clark Street during AM and PM peak hours. The City's third-party consultant peer reviewed the TIA and generally agreed with the analysis but raised concerns about the entering sight distance from SW Clark Street to the north. To mitigate for this concern, the City's third-party consultant recommends that the Applicant improve sight distance by clearing existing vegetation on the southwest corner of Newport Way SW and Wildwood Blvd SW. The Applicant submitted a transportation concurrency application. The City determined that the number of vehicle trips generated by the proposal would fall within available citywide capacity and that the proposal is consistent with concurrency codes. Accordingly, the City issued a transportation concurrency certificate for the proposal on March 12, 2019. Traffic impact fees would be required and would be calculated at the time of issuing building permits for each residential unit. *Exhibit 16; Exhibit 17; Exhibit 30, Staff Report, page 15; Exhibit 32.d.*

Tree Retention, Landscaping, and Open Space

15. Subdivisions in the SF-S zone must retain a minimum of 30 percent of the total caliper of existing significant trees outside of critical areas and buffers. *IMC 18.12.1385*. Creative Landscape Solutions prepared an arborist report for the project, updated October 12, 2020, which determined that the property contains a total of 1,983 caliper inches of existing significant trees. The Applicant proposes to retain 596 caliper inches of existing significant trees on-site, mostly within proposed Tract B, in accord with the tree retention requirement. The Applicant would be required to implement measures to protect retained trees during construction. The tree protection measures would be reviewed with the Applicant's construction plans and would be installed prior to clearing and grading activity. The Applicant proposes grading and construction of retaining walls along the perimeter of the site, which may result in trees being removed from an adjacent property to the north. The management company for the adjacent property has indicated that it does not have any issue with the proposed tree removal. In addition to subdivision tree retention requirements, each individual lot would be required to maintain a tree density of two significant trees per 5,000 square feet, which may consist of existing or replacement trees. *IMC 18.12.1370*. The City would review the project for compliance with the lot tree density requirement at the construction permit stage. *Exhibit 14; Exhibit 15; Exhibit 27; Exhibit 30, Staff Report, pages 8 and 9.*

16. IMC 18.07.420.5 provides specific landscape standards applicable to cluster housing projects. The Applicant would be required to submit a detailed landscape plan demonstrating compliance with the cluster housing landscape standards for review and approval prior to issuance of building permits. IMC 18.07.420.B.4.b requires cluster housing developments to have a minimum of 15 percent of the net site area as common usable open space. The Applicant would meet this requirement by converting an existing gravel driveway on the property into a pedestrian walking path and by providing additional common useable open space within a 14,079 square foot combined stormwater/open-space tract. The City would review the Applicant's final open-space design during the construction permit phase. *Exhibit 1; Exhibit 2; Exhibit 30, Staff Report, page 8.*

Utilities and Services

17. The City would provide water and sewer utilities. City staff reviewed the Applicant's conceptual sewer and water plan and determined that the proposed design for utility extensions would comply with applicable requirements under the municipal code and the Department of Ecology Criteria for Sewerage Works Design. Water would be supplied by a looped water main with connections to the City water system within SW Clark Street and Mine Hill Road SW. An access easement would be required to allow the City to service and maintain public utilities on the site. The preliminary geotechnical study prepared by Icicle Creek Engineers, Inc., provided detailed recommendations related to the installation of underground utilities at the top or base of on-site steep slopes, which

the Applicant would be required to follow. City staff determined that the Applicant's proposed water and sanitary sewer plan appears to be feasible and in compliance with applicable standards, but that the proposal would be reviewed in greater detail during the construction permit phase. *Exhibit 1; Exhibit 2; Exhibit 30, Staff Report, pages 18 and 19.*

18. City Associate Planner Valerie Porter testified that safe walking routes for students to a school bus stop located outside of the subdivision would be provided. Fire, school, and park impact fees would be required and would be calculated at issuance of the building permits for each residential unit. *Exhibit 30, Staff Report, page 24; Testimony of Ms. Porter.*

Critical Areas Variance

19. As noted above, the Applicant requests a critical areas variance to allow for the installation of water and sewer infrastructure and stormwater outfalls within the inner 75 percent of the stream buffer associated with Mine Hill Creek. The Applicant submitted a project narrative addressing the specific criteria for approval of a critical areas variance under IMC 18.10.430. The Applicant asserts that the proposal would meet the applicable criteria because:
    - The subject property is not located within the jurisdiction of the Shoreline Master Program.
    - The variance to allow installation of stormwater outfalls and water and sewer mains within the inner 75 percent of a Class 2 stream buffer are necessary because of unusual circumstances regarding the subject property. Locating the stormwater outfall from the on-site vault in strict compliance with code requirements would cause a safety hazard by undermining the stability of a steep slope adjacent to the Class 2 stream. There is no feasible alternative location for the proposed stormwater outfall adjacent to Mine Hill Road SW due to its topography and existing location within the stream buffer. The proposed location for water and sewer extensions serving the subdivision cannot be placed within the outer 25 percent of critical area buffers due to the unique topography of the site and the location of existing public water and sewer mains.
    - Denying the variance would deprive the property owner of all reasonable use of the property. There are no other feasible alternatives to address stormwater outfalls or to provide water and sewer service to developable areas of the property, regarding of the intensity of the development.
    - The Applicant's project narrative, technical studies, and other supporting documents submitted with the application demonstrate compliance with the critical areas variance criteria.
    - The variance would be in harmony with the purpose and intent of relevant City ordinances related to subdivisions and critical area regulations.

- The variance would not grant the Applicant a special privilege inconsistent with permitted uses on the property or on properties in the vicinity and in the same zone. Single-family detached and detached homes are an allowed use in the SF-S zone.
- The variance is necessary because of the existing topography of the site, the location and type of on-site critical areas, and the location of existing public utility mains and roads. These factors necessitate the location of water and sewer mains and stormwater outfalls within the inner 75 percent of critical area buffers. The proposed development would be consistent with the rights and privileges afforded to other similarly situated properties in the vicinity. The variance would allow adjacent properties to the south to connect to public utilities without the need for a similar variance.
- The variance would not be materially detrimental or injurious to either the subject property or improvements in the vicinity. The looping of the water main through the critical area buffer and the placement of the stormwater outfalls below the toe of a steep slope and adjacent to the existing road would enhance safety both on the property and in the vicinity of the property. The placement of the sewer main would maintain a gravity connection, which is safer and more reliable than pump systems, and, therefore, would avoid an undue burden on the City's utility services.
- The proposed alignment of the stormwater outfalls and utility mains was made following a consensus recommendation by City staff, City consultants, and the Applicant's consultants. There is no feasible alternative that would strictly adhere to the code requirements that would not otherwise compromise safety or cause an undue hardship.
- The variance is the minimum necessary, and would cause the least amount of disturbance necessary, to provide for safe stormwater outfalls and adequate utilities to serve the plat.
- The variance is necessary because of preexisting conditions or development patterns that are outside of the control of the Applicant/property owners.

Exhibit 3.

20. City staff also reviewed the proposal for compliance with the criteria for approval of a critical areas variance under IMC 18.10.430 and determined:
    - The proposed single-family residential land use is consistent with the purpose and intent of the Comprehensive Plan and Land Use Code. The Applicant's proposed mitigation measures would comply with Comprehensive Plan and Land Use Code policies and standards to protect the environment and mitigate for environmental impacts.
    - The variance would allow for construction of a single-family development, which is consistent with permitted uses of this zoning district and surrounding development and would allow the critical areas to remain.

- Due to the topography of the site, the location of on-site critical areas and associated buffers, and the location of existing utility mains, a variance is required to allow for construction of single-family development consistent with the same use rights permitted for other surrounding properties.
- The variance would not negatively impact adjacent parcels. Stormwater discharged into Mine Hill Creek would be treated prior to dispersal. The granting of a variance to allow construction of single-family residences would not be detrimental to the public welfare or injurious to the property or other improvements in the vicinity and zone.
- The Applicant evaluated several development scenarios in consultation with the City, and the selected proposal has been determined to be the less impactful design. Although the proposal involves infrastructure located within the inner 25 percent of a critical areas buffer, the design is the least environmentally damaging and creates minimal impacts. If strict adherence to critical area code provisions were required, it would result in an undue hardship and unnecessary environmental impacts that could create unsafe conditions.
- The proposed design would cause the least amount of disturbance necessary to provide stormwater outfalls and adequate utilities to serve the plat. The proposal would not adversely impact critical areas, and the Applicant would provide substantial mitigation for the impacts of the development.
- The variance is necessary due to existing site characteristics that were possibly the result of actions taken decades ago, prior to critical areas being regulated in the City, rather than actions taken by the current owner or Applicant.

Exhibit 30, Staff Report, pages 19 through 23.

Written Comments

21. The City received several comments on the proposal from members of the public, specifically:
    - Christine Pydych submitted a comment opposing the proposed development, noting that several residents do not want additional development in the area and would like to preserve the area's natural features.
    - Steve Briggs raised concerns about the proposal's traffic impacts and impacts to wildlife habitat.
    - Jill Rapier expressed concerns about allowing cluster housing projects within single-family residential zoning districts and about the proposal's environmental impacts.
    - Nicole Masciocchi expressed concerns about high-density development in the area adversely impacting wildlife habitat, traffic, and school capacity.
    - Nick Marquardt expressed concerns about the proposal's impacts to wildlife habitat.
    - Kristina Gravette raised concerns about the proposed density of the project, stating that the site would not be suitable for the project because old mines are

located underneath the property, the property contains small creeks, and the property serves as a wildlife corridor. She also raised concerns about the traffic impacts of the proposal.

- Anthony Pydych expressed his opposition to the proposed development, noting his concerns about the proposed density of the cluster housing development. He also raised concerns about the proposal's impacts to critical areas.
- John and Francie Kern raised concerns about high-density residential development changing the characteristics of the area.
- Quattro, LLC, submitted a comment stating that it owns the property immediately to the north of the site. It raised concerns about the Applicant's request for a critical areas variance to allow stormwater outfalls and utility extensions to be installed at their proposed locations, noting that the area has existing drainage issues. Quattro, LLC, requested that the City require the Applicant to provide additional analysis to determine whether the proposal would adversely affect its properties. It also raised concerns about the proposal's traffic impacts to SW Clark Street.
- Leslie Pantuso expressed concerns about the proposed density of the project not being in character with the area. She also raised concerns about the proposal's traffic impacts and impacts to wildlife habitat.
- Nicole Pyle raised concerns about the proposal's impacts to wildlife habitat, traffic, neighborhood character, and school capacity.
- Lotte and Mads Torgersen expressed concerns about environmental impacts of the proposal.
- Heather Briggs stated that she opposes additional residential development in the area, expressing concerns about impacts to the area's natural features.
- Leslie Grossruck raised concerns about the proposal's impacts to the neighborhood character, traffic, wildlife, trees, and streams.
- Wanda Nuxoll requested additional information about the project's potential stormwater and traffic impacts.
- Joe Schwab requested additional information about the proposal's stormwater management plan, noting existing drainage issues in the area. He inquired about whether a traffic impact analysis had been completed for the proposed development.
- Paula De Lucia raised concerns about the proposed density of the development, the proposal's traffic impacts, and the proposal's incompatibility with the historic character of the neighborhood.

Exhibit 26.

22. City staff provided responses to concerns raised by members of the public, noting:

- The municipal code allows parcels to be subdivided if the proposed subdivision complies with development standards. Parcels measuring two acres or more may utilize the cluster housing provisions of the municipal code. The Applicant has

attempted to design a project that is aligned with the character of neighborhood and complies with the municipal code. City Council has considered limiting density for parcels within the SF-S zone, but no new regulations have been adopted that would change this aspect of the code.

- As a condition of the cluster housing provisions, all critical areas and associated buffers, including Mine Hill Creek, would be placed in a tract or easement to be protected and remain undeveloped for perpetuity. Prior to placing critical areas into a NGPE, existing lawn and invasive plants will be removed and replaced with native shrubs and trees that will aid in improving the water quality in the wetland and downstream. Once the proposed native vegetation becomes established it will densely cover the buffer, create shelter for wildlife, and provide nutrient uptake functions as well as soil binding functions.
- The traffic impact analysis for the proposal concluded that additional vehicles generated by the proposed project would not impact queuing on Wildwood Blvd SW approaching SW Newport and will not block exiting vehicles from SW Clark Street during the AM and PM peak hours. Mine Hill Road SW is a narrow residential street. To keep the charm of the neighborhood and address guest parking concerns, the Applicant would widen the right-of-way to allow for safe passage of emergency vehicles and on-street parking in limited areas.
- This parcel has not been designated by the City as a greenbelt. All critical areas and associated buffers will be placed in a tract or easement to remain undeveloped in perpetuity.
- The Issaquah School District is responsible for constructing schools in response to growth within the community. The school district reviews new residential projects, collects impact fees to support school construction, and puts forward bonds for community consideration. Currently, the school district is in the process of building or receiving approval for two new schools.
- A preliminary coal mine hazard assessment was provided to the City for review and determined the project site does not contain any severe coal mine hazard areas. Moderate coal mine hazard areas have been identified on Lots 2 and 3. Prior to building permit issuance, additional information must be provided to the City demonstrating construction on Lots 2 and 3 would not negatively impact the underground coal mines and would be in accordance with the geotechnical report's recommendation.
- City staff agrees that the existing character of Mine Hill Road SW adds to the charm of the Mine Hill neighborhood. To maintain the character of the neighborhood the Applicant is proposing to construct a new street connecting the subdivision to SW Clark Street, which would limit vehicle traffic along Mine Hill Road SW. The Applicant has also requested a deviation from street standards, which the City approved, to allow for on-street parking and slight widening of the right-of-way to allow for emergency vehicle access.

- The Applicant provided a geotechnical report prepared by Icicle Creek Engineers, Inc., which was double peer reviewed by Golder Associate, Inc., and Wood Environment & Infrastructure Solutions, Inc. Both reviewers concurred with the geotechnical findings.
- The project would meet the tree retention requirements of the municipal code.
- The development would be required to comply with all current stormwater standards and regulations. City Code requires the development to detain, direct, and treat stormwater runoff generated from the project site. The project would also install a stormwater conveyance system along Mine Hill Road SW, which currently does not exist, to address stormwater within the right-of-way.

Exhibit 30, Staff Report, pages 24 through 27.

Testimony

23. City Associate Planner Valerie Porter testified generally about the application, the existing conditions of the project site, and how the proposal would comply with the requirements for approval of a subdivision and critical areas variance. Ms. Porter described several critical areas on the property, including a Category II wetland (Wetland A), a Class 2 stream (Mine Hill Creek), a Class 4 stream (Stream B), steep slope and landslide hazard areas, moderate coal mine hazard areas, and associated buffers. She stressed that the project would not directly impact any of the critical areas but that it would impact critical area buffers associated with Wetland A, Mine Hill Creek, and Stream B. Ms. Porter noted that the project would mitigate for buffer impacts through buffer averaging and buffer enhancement, as permitted under the City's critical areas ordinance. She stated that all critical areas and remaining buffer areas on-site would be permanently protected in NGPE tracts, noting that an on-site regulated steep slope area and associated buffer would also be protected within a NGPE due to its location adjacent to Mine Hill Creek. Ms. Porter stated that two existing residences on the property would remain in proposed Lots 1 and 3 at the southeast corner of the site along Mine Hill Road SW. She noted that the existing home and associated structures on proposed Lot 1 are located within the standard buffer associated with Mine Hill Creek but that the project would reduce the structures' nonconformance by reducing the buffer through buffer averaging. Ms. Porter stressed that the project would create a buildable area outside of the buffer on Lot 1 to facilitate redevelopment of the property in the future. She noted that development of Lot 2 or redevelopment of Lot 3, which contains the other existing residence, would require adherence to special engineering or architectural recommendations due to their location within a moderate coal mine hazard area.

Ms. Porter detailed how the Applicant's proposal would meet the preliminary requirements for a cluster housing development, noting that City staff would review the proposal for compliance with additional cluster housing requirements during the construction permit phase. She described the Applicant's request for a critical areas variance to allow installation of water, sewer, and stormwater infrastructure within the

inner 75 percent of critical area buffer, noting that the variance is necessary to provide looped utility connections to the subdivision and to avoid risks associated with locating stormwater outfalls at the top of steep slopes. Ms. Porter stressed that City staff supports approval of the critical areas variance because the proposed utility infrastructure design would have the least adverse environmental impacts. *Testimony of Ms. Porter.*

24. City Development Services Civil Engineer Stacey Rush testified that the Applicant's stormwater design is in the preliminary stage but is sufficient to demonstrate compliance with the requirements for preliminary plat approval. She noted that the Applicant's proposal for the location of stormwater outfalls would likely require hydraulic project approval by WDFW, which the Applicant would seek after completing a final stormwater design. *Testimony of Ms. Rush*.

25. Applicant Representative Ken Lyons testified generally about the proposal, noting that it has undergone several design changes to address the best way to provide access to the developable area in the western portion of the site. He stressed that City staff and several consultants hired by the City reviewed the critical area, geotechnical, drainage, and traffic studies submitted with the application and generally agreed with their determinations and recommendations. Mr. Lyons noted that hydraulic project approval from WDFW might not be required because the proposed outfalls would be located outside the ordinary high-water mark of Mine Hill Creek, but he explained that the Applicant would look further into the issue and would comply with the hydraulic project approval process if required. *Testimony of Mr. Lyons*.

26. Wetland Specialist Teresa Opolka of Aquatica Environmental Consulting, LLC, testified that the on-site wetland was delineated in accordance with the Army Corps of Engineers 1987 Wetland Delineation Manual and the 2010 Regional Supplement for the Western Mountains, Valleys, and Coast Region and was rated in accordance with the 2014 Department of Ecology Wetland Rating System for Western Washington. She explained that the Army Corps of Engineers still uses the 1987 delineation manual and that the 2010 supplement addresses regional conditions and science updates. Ms. Opolka noted that the conceptual mitigation plan for the proposal also addresses a Class 4 stream (Stream B) identified by City consultants during peer review of the Applicant's critical area report. *Testimony of Ms. Opolka*.

27. City Land Development Manager Lucy Sloman testified about the four on-site steep slope areas that were determined to be exempt from steep slope regulations. She noted that, under the municipal code, manmade steep slopes, or steep slopes with less than 20 feet in vertical gain, are unregulated and that both of these factors contributed to the determination that the four on-site steep slopes would be exempt from steep slope regulations. *Testimony of Ms. Sloman*.

28. Ashley Anderson testified that she lives on Mine Hill Road SW and would like additional information on proposed improvements to Mine Hill Road SW. *Testimony of Ms. Anderson*.

29. Mr. Lyons responded to Ms. Anderson's inquiry, noting that the City would require the Applicant to improve Mine Hill Road SW in a manner providing additional parking and supporting emergency vehicle access but without significantly changing the existing character of the road or neighborhood. *Testimony of Mr. Lyons*.

30. Project Engineer Maher Joudi of D.R. Strong Consulting Engineers, Inc., provided additional information about proposed frontage improvements to Mine Hill Road SW. He noted that the City had originally requested full frontage improvements to include curb, gutter, planter strip, and sidewalk. Mr. Joudi explained that Applicant requested a road variance after listening to neighbor concerns about full frontage improvements, which would allow Mine Hill Road SW to be improved in a manner maintaining the existing character of the road while providing additional parking and minimal road expansion to provide emergency vehicle access. He also explained that the project would receive credit for impervious surface removal that would allow for a reduction of critical area buffer areas. *Testimony of Mr. Joudi*.

City Staff Recommendation

31. Ms. Porter testified that City staff determined that, with conditions, the proposal would be consistent with the criteria for approval of a critical areas variance, the Issaquah Comprehensive Plan, the Issaquah Land Use Code, and other application development regulations, including Chapter 18.13 IMC (Subdivision Code) and RCW 58.17.110 (Washington State Subdivision Code), and it would make appropriate provisions for the public health, safety, and general welfare. Mr. Lyons testified that the Applicant would not have any issue complying with City staff's recommended conditions of approval. *Exhibit 30, Staff Report, pages 27 through 30; Testimony of Ms. Porter; Testimony of Mr. Lyons.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has authority to hear and approve, conditionally approve, or disapprove the preliminary plat request after review of the preliminary plat, the administration's recommendation, testimony, and exhibits submitted at the public hearing. The Hearing Examiner also has authority to hear and decide requests for a critical areas variance. The Hearing Examiner makes the final decision on preliminary subdivisions and variances. *Issaquah Municipal Code (IMC) 18.03.060.A-B; 18.03.170; 18.04.490.C.1; 18.10.420; 18.13.140.A.*

Criteria for Review

Preliminary Plat

Preliminary plat proposals are reviewed through the Modified Level 4 review process and must comply with all the standards and criteria set forth in Chapter 18.13 IMC. *IMC 18.04.480 and 18.04.490.C.1.*

The standards and criteria regarding preliminary plats set forth in Chapter 18.13 IMC are established to promote the orderly and efficient division and re-division of land within the city, to avoid placing undue and unnecessary burdens on both the Applicant and the City, and to promote the public health and general welfare, complying with the provisions of Chapter 58.17 RCW. The criteria for review of a preliminary plat are set forth in RCW 58.17.110(2), as follows:

> A proposed subdivision and dedication shall not be approved unless the city, town, or county legislative body makes written findings that:
> (a) Appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and
> (b) The public use and interest will be served by the platting of such subdivision and dedication.

Prior to any approval of the preliminary plat, all minimum street and utility improvements, or reasonable conditions deemed necessary to fulfill the purpose of the subdivision code, shall be specified by the Hearing Examiner, and the Applicant shall be advised of such. *IMC 18.13.140.B.*

In addition, the property's development is governed by the provisions outlined in the cluster housing standards and the district standards. *IMC 18.07.360; IMC 18.07.420.*

Critical Areas Variance

The purpose of the City's critical areas variance provisions is to provide a property owner with relief when strict implementation of the City's critical areas ordinance would deprive the property owner of privileges commonly enjoyed by properties in the same vicinity and zone and under the same land use regulations or would deny the property owner of all reasonable use of the property. *IMC 18.10.430.B.* The Hearing Examiner may grant a request for a critical areas variance only if the Hearing Examiner determines that all the following criteria are met:

1. The variance is in harmony with the purpose and intent of the relevant City ordinances and the Comprehensive Plan;

2. The variance shall not constitute a grant of special privilege which would be inconsistent with the permitted uses, or other properties in the vicinity and zone in which the subject property is located;
3. That such variance is necessary, because of special circumstances relating to the size, shape, topography, location or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in the vicinity, located in the same zone as the subject property and developed under the same land use regulations as the subject property requesting the variance;
4. That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated;
5. That alternative development concepts that comply with the Code provisions to which the variance is requested have been evaluated, and that undue hardship would result if the strict adherence to the Code provisions were required;
6. The variance granted is the minimum amount that will comply with the criteria listed above and the minimum necessary to accommodate the permitted uses proposed by the application, and the scale of the use shall be reduced as necessary to meet this requirement; and
7. The need for the variance is not the result of actions of the applicant or property owner.

IMC 18.10.430.C and D.

If the Hearing Examiner determines that the proposal does not meet the variance criteria listed above, the Hearing Examiner may, at the same public hearing, review the application under the following criteria for a reasonable use variance:

1. There is no reasonable use of the property left; and
2. That the granting of this variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated; and
3. The variance granted is the minimum amount that will comply with the criteria listed above and the minimum necessary to accommodate the permitted uses proposed by the application, and the scale of the use shall be reduced as necessary to meet this requirement; and
4. The need for the variance is not the result of actions of the Applicant or property owner.

IMC 18.10.430.C and E.

The criteria for review adopted by the Issaquah City Council are designed to implement the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW

36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with City development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040*.

Conclusions Based on Findings

Preliminary Plat

1. **With conditions, appropriate provisions would be made for open spaces, drainage ways, streets, transit stops, potable water supplies, sanitary wastes, parks and recreation, schools and school grounds, and all other relevant facts.** The property is in the SF-S zone of the Squak Mountain subarea and is designated "Low-Density Residential" under the City Comprehensive Plan. The proposal would be consistent with the purpose of the SF-S zone, and with surrounding single-family and multi-residential development, by providing detached, single-family homes free from incompatible uses in an area adequately served by public services. The Applicant would develop the 4.9-acre property utilizing the cluster housing provisions of the municipal code. The cluster housing standards promote maximum allowable density, while preserving critical areas through lot-size reduction; provide more common usable and native forested open space; encourage affordable housing through smaller lots; and provide efficient arrangement of structures for providing services and infrastructure.

   The property contains approximately 1.86 acres of critical areas, which include a Category II wetland (Wetland A), a Class 2 stream (Mine Hill Creek), a Class 4 stream (Stream B), steep slope and landslide hazard areas, and associated buffers. The proposal would not result in any direct impacts to these on-site critical areas but would impact buffers associated with Wetland A, Mine Hill Creek, and Stream B. To mitigate for the proposal's impacts to stream and wetland buffers, the Applicant would utilize buffer averaging, buffer reduction allowed through the removal of legally nonconforming impervious surface areas within the buffers, and buffer enhancement, which would include removal of invasive species and planting of native trees and shrubs. The on-site critical areas and remaining associated buffers would be permanently protected within NGPE tracts that would be owned and maintained by a homeowners association. The Applicant's wetland specialist, Aquatica Environmental Consulting, LLC, determined—and the City's third-party consultant agreed—that the proposed mitigation would not result in an adverse impact to critical area functions and values. The property also contains a moderate coal mine hazard area in the southeast corner of the property, potentially impacting development on proposed Lots 2 and 3. To address the potential risks associated with the moderate coal mine hazard area, development within the hazard area would be required to adhere to geotechnical engineering recommendations. In addition, the Applicant would be required to submit a final coal mine hazard assessment report for approval by the City prior to issuance of a site work permit.

The proposal would meet the cluster housing requirement to provide a minimum of 15 percent of the net site area as common usable open space by converting an existing gravel driveway into a pedestrian walking path and by providing additional common usable open space within a 14,079 square foot combined stormwater/open-space tract. The City would review the Applicant's final open-space plan for compliance with specific design requirements during the construction permit phase. The project would meet the tree-retention requirement for significant trees outside of critical areas and buffers. Compliance with individual-lot, minimum tree-density requirements would be reviewed after the Applicant submits a landscape plan prior to issuance of building permits. The Applicant would control stormwater by conveying runoff to an underground detention vault located within proposed Tract B for water quality treatment prior to discharging at a natural discharge location to Mine Hill Creek. The on-site stormwater management facilities would be privately owned and maintained by a homeowners association. The Applicant would also construct a conveyance system along Mine Hill Road SW to direct stormwater to an outfall discharging to Mine Hill Creek. The stormwater facilities along Mine Hill Road SW would be publicly maintained and located within public easements and/or rights-of-way. Public water and sewer service is available for the development. As detailed in Conclusion 3, below, the proposal would meet the criteria for a critical areas variance to allow stormwater outfalls and water and sewer infrastructure to be located within the inner 75 percent of the buffer associated with Mine Hill Creek.

Access to the three proposed lots at the southeast corner of the property would be provided directly from Mine Hill Road SW. The City approved a road standards variance allowing a deviation from the frontage improvements that would typically be required for Mine Hill Road SW. The variance would allow the existing character of Mine Hill Road SW to be maintained, while providing additional parking and necessary emergency vehicle access. Access to the 17 lots on the western portion of the property would be provided from a new public street extending north from the subdivision to SW Clark Street and from new internal private roads connecting with the new public street extension. Required improvements to the new public and private roads, which would include sidewalk installation as well as the proposed pedestrian walkway connecting to Mine Hill Road SW, would ensure that students residing at the subdivision would have safe walking conditions to school bus stops. The project would require each lot to provide a minimum of two on-site parking spaces. City staff reviewed the proposal and determined that it would be feasible to provide the on-site parking spaces required for each lot. City staff would review the proposed development for compliance with the individual lot parking requirements at the building permit stage. The City reviewed the Applicant's traffic impact analysis, determined that the number of vehicle trips generated by the proposal would fall within available citywide capacity, and issued a transportation concurrency certificate. Transportation, fire, school, and park impact fees would be required and would be calculated at the time of issuing building permits for each residential unit. As detailed below, conditions are necessary to ensure the proposal

complies with all local, state, and federal requirements related to approval of a preliminary plat. *Findings 1, 5 – 31.*

2. **With conditions, the public use and interest would be served by the proposed preliminary plat.** The City provided adequate notice and opportunity to comment on the proposal. The City received several public comments on the proposal in response to its notice materials, which generally raised concerns about the proposed density of the development, traffic impacts, stormwater impacts, impacts to wildlife habitat, proposed tree removal, and impacts to adjacent properties. The proposed density of the project is 4.08 dwelling units per acre, less than the maximum density of 4.5 units per acre allowed in the SF-S zone. Because the project would utilize cluster housing standards that are allowed for properties measuring at least two acres in the SF-S, minimum lot size and width requirements would not apply to the individual lots within the subdivision. The Applicant would be required to submit a final stormwater design for City review during the construction permit phase to ensure that stormwater on-site would be addressed in compliance with the requirements of the 2012 Department of Ecology Stormwater Management Manual for Western Washington, as amended in 2014, and with the 2017 addendum to the City's adopted storm design manual. As noted in Conclusion 1 above, project would meet the tree-retention requirement for significant trees outside of critical areas and buffers. The City reviewed the proposal and issued an MDNS that includes conditions to mitigate potential significant adverse impacts; the MDNS was not appealed. The preliminary plat would provide single-family, cluster housing residential development consistent with applicable development regulations. City staff determined that, with conditions, the proposal would be consistent with all applicable City, county, and state requirements, including the applicable Comprehensive Plan, municipal code, and development standards. The public interest would be served by the platting of the subdivision. As noted above in Conclusion 1, conditions are necessary to ensure that the proposal meets all criteria required for plat approval. *Findings 1 – 18, 21 – 31.*

Critical Areas Variance

3. **With conditions, the proposal would meet the requirements for a critical areas variance.** The proposed single-family land use is consistent with the Low Density Residential Comprehensive Plan designation and with the SF-S zoning designation for the property. The Comprehensive Plan includes policies and standards designed to protect the environment and to mitigate environmental impacts. The variance is necessary to allow looped water and sewer utility connections to serve the developable area in the western portion of the property. The proposed location of utility extensions, along a new pedestrian trail replacing an existing gravel driveway, would help to minimize impacts to the critical area buffer because the existing driveway has already impacted the buffer. The variance is also necessary to allow stormwater outfalls to be located in manner avoiding potential safety risks associated with locating stormwater outfalls at the top of steep slopes. The variance request, if approved, would not grant the

Applicant a special privilege inconsistent with the permitted uses on other properties in the vicinity. The Applicant requests the variance to allow a use of the property in a manner consistent with the surrounding properties, including existing subdivisions that are developed with single-family and multi-family residences. The variance would not result in a material detriment to the public welfare or cause injury to adjacent properties. Stormwater entering Mine Hill Creek from the proposed outfalls would be treated in accordance with the requirements of the 2012 Department of Ecology Stormwater Management Manual for Western Washington, as amended in 2014, and with the 2017 addendum to the City's adopted storm design manual. In addition, the proposed location for utility extensions would allow the subdivision to be served by looped utility connections that would include a gravity sewer main, which would benefit neighboring properties by maintaining efficient public utility services in the area. The Applicant explored several options for the proposed development, and the proposed alignment of the stormwater outfalls and utility mains was made following a consensus recommendation by City staff, City consultants, and the Applicant's consultants. The Applicant and the City staff agree that the proposed design would cause the least amount of disturbance necessary to provide stormwater outfalls and adequate utilities to serve the plat. The need for a variance is due to existing conditions of the property and is not the result of any actions taken by the Applicant or property owner. *Findings 1, 3 – 31.*

DECISION

Based on the preceding findings and conclusions, the request for a preliminary plat to subdivide two parcels, totaling approximately 4.9 acres, into 20 single-family residential lots, utilizing the cluster housing provisions of the municipal code, with associated improvements, and for a critical area variance to allow for the installation of stormwater, water, and sewer infrastructure within the inner 75 percent of a Class 2 stream buffer, on property located to the southwest of the northern intersection of Mine Hill Road SW and Wildwood Blvd SW, is **APPROVED**, subject to the following conditions:[4]

1. Building setbacks and impervious surface coverage will be reviewed with construction permits. Upon submittal of the final plat, an impervious surface table must be submitted to the City for review and approval, which shows the maximum square footage of impervious surface allowed per lot. This document must also demonstrate how the proposal does not exceed the impervious surface limitation for the site. All building permits for each individual lot must identify the total amount of impervious surface being covered on the site.

2. Critical areas on Lots 1-3 must be placed in a Native Growth Protection Easement (NGPE) or use an alternative protection method. Split rail fencing and signs must be

[4] This decision includes conditions designed to mitigate impacts of the proposed project as well as conditions required by City code.

installed along the border of the critical area buffer. Owner and maintenance responsibility will be on the property owner of the respective lot, which must be shown on the final plat drawing.

3. An access/maintenance easement must be established for Lots 1 and 3 to allow the property owners access into the adjacent stream buffer. In addition, a note must be placed on the plat explaining for any reason other than an accident, act of nature, or similar involuntary occurrence the existing home must be reconstructed outside of the critical area buffers.

4. On-site driveways shall be at least 20-feet in length or more, to accommodate on-site parking.

5. Garages shall be designed, at a minimum, to include secure storage space for three waste containers (recycling, garbage, and compost), which may be in the garage. If a garage is present, it must be designed to accommodate the elements located inside without impinging on the necessary space for any other elements also located in the garage. Vehicle parking shall be sized to standard stall dimensions. Equipment located inside the garage, such as a water heater or furnace, shall be clearly and accurately depicted on the building plans to provide confirmation the garage is adequately designed. This will be reviewed with building permits.

6. The designated common usable open space areas must be designed to accommodate a variety of recreation uses, including, but not limited to, trails, picnic areas and other recreational uses. The final plat will indicate which tracts include recreation as an allowed use for future reference and to ensure they are preserved for this use.

7. Approved tree protection measures must be in place prior to any construction or demolition activities and installed in conjunction with limits of clearing and grading delineation or the City approved arborist report. Clearing and grading shall be outside the critical root zone of significant trees. Should clearing and grading be proposed within a retained tree's dripline, an arborist report will be required to ensure no negative impacts will be made to the tree. This will be reviewed with any construction activities including site work permits.

8. A final landscape plan must be submitted for City review and must meet provisions in IMC 18.07.420.B.5. The project's compliance with the landscape code will be reviewed with the landscape permit.

9. The final plat drawing shall clearly illustrate the various tracts and easements on the property as well as in writing, including the NGPE. The text must also identify ownership and maintenance responsibilities.

10. The environmentally critical areas (steep slopes, wetlands, streams, moderate coal mine hazard areas, and associated buffers) shall be protected as required by the Critical Areas Ordinance, Chapter 18.10 IMC, including:

    a. Record a Notice on Title: Prior to issuance of the building permit, record a Notice on Title of the presence of the critical area or buffer and stating that limitations on actions in or affecting such areas or buffers may exist.

    b. Record Critical Area Tract: With recording of the final plat, establish and record Critical Area Tracts to protect the critical area(s) in the form of a Native Growth Protection Easement (NGPE) with the following language:

    Restrictions for Native Growth Protection Easements/Sensitive Area Tracts and Buffers: The Sensitive Area Tract conveys to the City a beneficial interest in the land within the sensitive area tract. This interest includes the preservation of native vegetation for all purposes that benefit the public health, safety, and welfare, including control of surface water and erosion, maintenance of slope stability, and protection of plant and animal habitat. The sensitive area tract imposes upon all future present and future owners and occupiers of the land subject to the tract the obligation, enforceable on behalf of the public by the City of Issaquah, to leave undisturbed all trees and other vegetation within the tract. The vegetation within the tract may not be cut, pruned, covered by fill, removed, or damaged without approval in writing from the City of Issaquah or its successor agency, unless otherwise provided by law. Demonstrated health and safety concerns shall be considered by the City when permitting the cutting, pruning, or removal of living or dead vegetation.

11. Prior to issuance of temporary occupancy of the last building, grading or construction impacts to adjacent critical area and associated buffers must be restored.

12. The required split-rail fencing for the critical areas will need to be placed on the outer boundaries of the critical area. Fencing placed on Lot 1 will not be placed on the outer boundary, but around the house and garage, due to its existing location. Should these structures be removed from the critical area buffer, the fencing will need to be relocated to the buffer boundary. This will be reviewed with construction permits.

13. Prior to issuance of building permits the following must be established:

a. A mechanism that notifies all future buyers of the lot that the steep slope buffer was reduced, and that development has occurred within 50-feet of the steep slope or the steep slope has been eliminated (e.g., notice on title); and
b. An agreement shall be executed on a form approved by the City Attorney, which indemnifies and holds the City harmless for development within 50-feet of the steep slope.

14. Recommendations were suggested in the in the preliminary Geotechnical Report dated June 29, 2020, and Coal Mine Hazard Assessment dated July 7, 2015, prepared by Icicle Creek Engineers. Moving forward the reports must be combined and/or clearly identify final recommendations. Homes constructed on Lots 2 and 3 will require special engineering or architectural recommendations due to underground coal mine hazard areas. This will be reviewed in detailed with construction permits.

15. A preliminary Coal Mine Hazard Report was provided. Prior to issuance of the site work permit a final and stamped Coal Mine Hazard Assessment report and supporting project documents must be provided to the City for review and approval.

16. The project will be required to evaluate the Newport Way SW & Wildwood Blvd SW intersection with particular attention to sight distance. This may necessitate removal of vegetation on the southwest corner of the intersection within the right-of-way. This will be reviewed with the site work permit as well as during site inspection and prior to temporary occupancy of the first home.

17. Road B shall be constructed to terminate at the parcel boundary line. An access easement shall be established along Road A and Road B to allow access to benefit the adjacent parcel and allow for future road construction by others to extend Road B southward. This will be reviewed with the site work permit.

18. All internal roads must be designated as private roads with access granted via recorded easements. Maintenance of private roads will be performed by the HOA. Language identifying ownership and maintenance responsibilities must be provided on the final plat drawings.

19. A lighting photometric plan shall be provided for the project site and right-of-way lighting. The lighting levels shall comply with IMC 18.07.107 and shall provide an adequate amount of illumination for the intended use. On-site lighting shall not exceed 14-feet in height and should be scaled to the pedestrian. Light fixture style shall be in keeping with the intended scale and character of the Neighborhood and coordinated with street tree layout and other street elements. Lighting shall be designed so there is no light spillover into critical areas.

To facilitate review of the lighting, a photometric calculation, stamped by a professional engineer, showing illumination levels on the pavement shall be submitted with the site work permit for construction of lighting. A point-by-point calculation is required. The illumination calculation shall include all fixtures that contribute light to the site (poles, bollards, building mounted lighting). Low wattage decorative fixtures such as sconces or porch lights can be excluded from the calculation. No up-lighting is allowed.

20. Geotechnical approval is required for proposed locations of two storm outfalls (from vault and from Mine Hill Rd SW), to verify location, slope, and stream bank stability. This must be provided to the City for review prior to issuance of the site work permit.

21. All land/soil disturbing activities shall occur during the dry season (May 1st through September 30th) unless it can be demonstrated by the Applicant that these can be safely preformed, consistent with City rules and standards. To continue land/soil disturbing activities outside of the dry season, a geotechnical evaluation of the appropriateness of proposed activities and Wet Season TESC Plan must be submitted to the City by September 1st and approved prior to October 1st (per IMC 16.26.050). The Wet Season TESC Plan shall receive geotechnical peer review by a City selected consultant at the Applicant's expense.

22. Contractor must submit a proposed dewatering system design and plan layout to the City for review with the site work permit. The proposed plan must be consistent with the final geotechnical study and will be reviewed in conjunction with the critical area mitigation plan.

23. Special design consideration must be given to the potential for high groundwater, liquefaction and weak soils and their impacts on the on-site sanitary sewer system. The special design considerations must be summarized in a report that accompanies the sanitary sewer design and must be submitted with, or before, utility permit submittal. This condition will be enforced during utility permit review and approval.

24. Water and sanitary sewer mains will be installed within the proposed underground utility easement in the north part of Tract A. An easement must be established allowing City to own and operate the mains.

25. Impact and mitigation fees are required for each new single-family residence. The Applicant will receive credit for the single-family dwelling that existed on the site. The following impact fees will be required, and the applicable cost calculated at the time of issuance of the building permits for each residential unit: Transportation, Fire, Schools, Parks, General Government (SEPA), Police (SEPA), Bicycle & Pedestrian (SEPA).

26. The Applicant shall comply with the Mitigation measures set forth by the Mitigated Determination of Nonsignificance, issued on February 12, 2021.

Decided this 6th day of May 2021.

ANDREW M. REEVES
Hearing Examiner
Sound Law Center